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7 HSIN LIN,  
8 Plaintiff,  
9 v.  
10 SOLTA MEDICAL, INC.,  
11 Defendant.

Case No. 21-cv-05062-PJH

**ORDER GRANTING MOTION TO  
RETAIN CONFIDENTIALITY AND  
MOTIONS TO SEAL**

Re: Dkt. Nos. 94, 95, 98

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14 Before the court is defendant Solta Medical, Inc.'s motion to Retain Confidentiality  
15 and the parties' motions to seal. See Dkts. 94, 95 & 98. The matter is fully briefed and  
16 suitable for decision without oral argument. Having read the papers filed by the parties  
17 and carefully considered their arguments and the relevant legal authority, and good  
18 cause appearing, the court hereby GRANTS the motions, for the following reasons.

19 **BACKGROUND**

20 In January of this year, Solta learned that two documents it produced in the instant  
21 litigation and marked "CONFIDENTIAL" under the terms of the governing protective order  
22 were provided to the Taipei District Court in a foreign litigation involving the plaintiff.  
23 Plaintiff's counsel in this action admitted to providing the documents to plaintiff's lawyer in  
24 the Taiwan action "to assist her in the ongoing case in Taipei District Court against  
25 Dr. Yang". See Declaration of Hyung Steele, Dkt. 95-1 ("Steele Decl."), Ex. C. The  
26 foreign litigation was brought by plaintiff and seeks compensation for the same cosmetic  
27 procedure underlying this action.

28 Plaintiff's counsel in Taiwan had asked counsel in this action whether he had any

1 evidence supporting the claim that the device used on plaintiff was a counterfeit. See  
2 Declaration of Jeremy Pollack, Dkt. 97-1 (“Pollack Decl.”) ¶ 5. In response, counsel in  
3 this action sent Taiwanese counsel the two documents at issue in this motion, among  
4 others, to assist in that litigation. Id. ¶ 8.

5 In January 2024, the Taiwan Taipei District Court sent defendant a letter  
6 requesting information in connection with that case. Steele Decl. ¶¶ 7–9. In its letter, the  
7 Taipei District Court requested information about (and attached) the two documents at  
8 issue in this motion. Id. Solta had not received a request from plaintiff to permit  
9 disclosure of materials marked confidential under the protective order. Id. ¶ 10.

10 On February 1, 2024, Solta’s counsel sent a letter to plaintiff’s counsel regarding  
11 the unauthorized disclosure. Solta’s letter requested that plaintiff’s counsel immediately  
12 cease and desist the disclosure of any Solta Confidential documents or information in  
13 violation of the protective order, and to promptly disclose any and all other unauthorized  
14 disclosures. On February 6, 2024, plaintiff’s counsel responded by questioning the  
15 confidentiality of the documents.

16 On February 10, 2024, Solta e-mailed plaintiff’s counsel again to request an  
17 explanation for the unauthorized disclosure of the two confidential documents to the  
18 Taipei District Court and to confirm that no other Solta confidential documents had been  
19 provided to unauthorized individuals. On February 13, 2024, plaintiff’s counsel  
20 responded, saying that although they had provided those documents to the Taipei court,  
21 they had not provided any other documents to anyone nor would they, and they would  
22 request that the documents be kept confidential in Taiwan. Id., Ex. C.

23 Plaintiff contends that Solta had designated every document it produced—more  
24 than 9,000 pages—as confidential. Pollack Decl. ¶ 11. In response, Solta issued a  
25 supplemental production of de-designated documents on February 9, 2024.

## 26 DISCUSSION

### 27 A. Legal Standard

28 “Generally, the public can gain access to litigation documents and information

1 produced during discovery unless the party opposing disclosure shows ‘good cause’ why  
2 a protective order is necessary.” Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.,  
3 307 F.3d 1206, 1210 (9th Cir. 2002). Under Federal Rules of Civil Procedure 26, “[t]he  
4 court may, for good cause, issue an order to protect a party or person from annoyance,  
5 embarrassment, oppression, or undue burden or expense” by “requiring that a trade  
6 secret or other confidential research, development, or commercial information not be  
7 revealed or be revealed only in a specified way”. Fed. R. Civ. P. 26(c)(1)(G). “A party  
8 asserting good cause bears the burden, for each particular document it seeks to protect,  
9 of showing that specific prejudice or harm will result” if a protective order is lifted. Foltz v.  
10 State Farm Mut. Auto Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003).

11 When the confidentiality of information under a protective order is challenged, the  
12 court “must proceed in two steps. First, it must determine whether particularized harm  
13 will result from disclosure of information to the public. . . . Second, if the court concludes  
14 that such harm will result from disclosure of the discovery documents, then it must  
15 proceed to balance the public and private interests to decide whether maintaining a  
16 protective order is necessary.” In re Roman Cath. Archbishop of Portland in Oregon, 661  
17 F.3d 417, 424 (9th Cir. 2011) (internal quotation marks omitted).

18 The Ninth Circuit has directed courts doing this balancing to consider the following  
19 factors: “(1) whether disclosure will violate any privacy interests; (2) whether the  
20 information is being sought for a legitimate purpose or for an improper purpose;  
21 (3) whether disclosure of the information will cause a party embarrassment; (4) whether  
22 confidentiality is being sought over information important to public health and safety;  
23 (5) whether the sharing of information among litigants will promote fairness and  
24 efficiency; (6) whether a party benefitting from the order of confidentiality is a public entity  
25 or official; and (7) whether the case involves issues important to the public.” Id. at 424  
26 n.5 (quoting Glenmede Tr. Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995)).

27 **B. Analysis**

28 As an initial matter, the court notes that both parties have violated the protective

1 order in this action. See Stipulated Protective Order, Dkt. 47 ("PO").

2 Plaintiff has violated the protective order by impermissibly disclosing documents  
3 defendant had designated as CONFIDENTIAL without following the requirements of the  
4 protective order before doing so. The protective order provides that confidential materials  
5 may only be disclosed to the people specified in the order. PO ¶ 7.1. If a party is  
6 compelled to produce confidential materials in another litigation, the protective order  
7 spells out a process for doing so that includes notifying the designating party. PO ¶ 8.  
8 Plaintiff did not follow this procedure. If a party makes an unauthorized disclosure of  
9 protected material, the protective order specifies a process that party must follow. PO  
10 ¶ 10. Plaintiff has not followed those procedures.

11 When initially producing materials, defendant issued a blanket "CONFIDENTIAL"  
12 designation on every document it produced. The protective order prohibits such "[m]ass,  
13 indiscriminate, or routinized designations". PO ¶ 5.1. After the issue was brought to its  
14 attention, defendant re-produced some documents without a confidentiality designation,  
15 thus remedying that error to some degree.

16 The pending motions to retain confidentiality and to seal present the same  
17 question: whether two documents defendant produced should retain their confidentiality  
18 designations and thus be filed under seal.

19 The first document at issue is referred to as the CATSWeb Complaint Report,  
20 which is an internal complaint file related to plaintiff's adverse event. See Dkt. 94-3,  
21 Ex. A, at ECF pp. 2–26. Solta's complaint reports are generated through an internal  
22 procedure, and permissions to view these materials are limited even within the company  
23 as the records contain confidential health information. The complaint file also reflects  
24 Solta's private internal processes. It includes information like the Solta employees  
25 involved in investigations, product and plant evaluations, reportability assessments, and  
26 medical evaluations. Solta's internal procedures are not public, and it argues that if  
27 disclosed it could harm Solta's standing in the marketplace by giving competitors insight  
28 into Solta's product complaint assessment and investigation practices. Declaration of

1 Sundeep Jain, Dkt. 94-1 (“Jain Decl.”) ¶¶ 4–6.

2       The second document at issue is referred to as Solta Taiwan’s internal AE case  
3 report slides, which discuss Solta’s internal strategy and response to the incident and  
4 plaintiff’s press conference. See Dkt. 94-3, Ex. A, at ECF pp. 28–31. This document  
5 includes materials prepared by a small group of individuals at the company and describe  
6 Solta’s internal strategy regarding media and publicity. The document contains  
7 information pertaining to Solta’s internal process for investigating and assessing adverse  
8 events, protected health information, and information about Solta’s internal strategy for  
9 complaint handling and media publicity. Jain Decl. ¶¶ 4–6.

10      These documents are presented with a motion that is only tangentially related to  
11 the merits of the case. The documents have been filed in relation to a motion following  
12 from plaintiff’s violation of the protective order by sharing documents marked as  
13 confidential with an outside party. Plaintiff questioned the legitimacy of the confidentiality  
14 designations to defendant, and defendant thereafter filed a motion to reaffirm the  
15 confidentiality designations. Accordingly, good cause to seal needs to be shown. See  
16 Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1180 (9th Cir. 2006) (“A ‘good  
17 cause’ showing under Rule 26(c) will suffice to keep sealed records attached to non-  
18 dispositive motions.”).

19      Under the good cause standard, the first question is whether “particularized harm  
20 will result from disclosure of information to the public.” In re Roman Catholic Archbishop  
21 of Portland, 661 F.3d at 424 (quoting Phillips, 307 F.3d at 1211). These documents show  
22 ongoing business processes, procedures, and strategies by showing how Solta  
23 investigates and assesses potential product failures. Moreover, these documents  
24 concern products that remain in use in the market. Defendant provides some explanation  
25 that these materials are closely guarded even within Solta, they reveal internal  
26 processes, and that exposing them would give competitors insight into these processes.  
27 Accordingly, defendant has demonstrated that particularized harm will result from  
28 disclosure to the public.

As good cause has been shown, the second question requires the court to balance various factors. Factor 1, whether disclosure will violate any privacy interests, supports sealing, as defendant's private business processes would be affected. Factor 2, whether the information is being sought for a legitimate purpose or for an improper purpose, strongly supports sealing. Plaintiff is seeking to make these materials public only after violating the protective order by impermissibly disseminating them. There is no other legitimate reason offered for why she seeks to make the contents public. This factor heavily weighs in favor of sealing the materials in relation to the present motions and maintaining their confidentiality designations for now. The remaining factors are either neutral or favor disclosure. Considering the factors, the court finds that given plaintiff's conduct in relation to these documents, factor two deserves particular weight and justifies sealing the materials and maintaining their confidentiality designations.

13 Accordingly, defendant's motion to retain confidentiality of the documents is  
14 GRANTED, the parties' accompanying sealing motions are GRANTED, and the materials  
15 filed under seal in support of the pending motions shall remain under seal.

**IT IS SO ORDERED.**

17 | Dated: April 11, 2024

/s/ Phyllis J. Hamilton

**PHYLLIS J. HAMILTON**  
United States District Judge